

**CAPITAL CITIES/ABC, INC.**

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**Sam Antar**

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July 17, 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**HAND DELIVER**

**Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554**

**Dear Ms. Searcy:**

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and five copies of Comments in MM Docket No. 87-268.

If there are any questions in connection with the foregoing, please contact the undersigned.

Sincerely yours,

Sam Antar

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Enclosures

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
 )  
Advanced Television Systems )  
And Their Impact Upon The )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

COMMENTS OF CAPITAL CITIES/ABC, INC.

Sam Antar  
Vice President, Law & Regulation

Capital Cities/ABC, Inc.  
77 West 66th Street  
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Counsel for Capital Cities/ABC, Inc.

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MM Docket No. 87-268

To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. is a signatory to the Joint Broadcaster Comments filed on this date in response to the Commission's Second Report and Order/Further Notice of Proposed Rulemaking ("Order/FNPRM") in this proceeding and supports the comments as stated therein. These separate comments are filed to present our Company's additional views on the Commission's proposal to suspend the dual network rule<sup>1</sup> to permit networks to give their affiliates a second feed for ATV.<sup>2</sup>

1. Temporary Suspension Of The Dual Network Rule Would Be A Logical Extension Of The Commission's Decision To Rely On The Existing Framework Of The Broadcast Industry To Implement ATV.

In the Order/FNPRM discussion of eligibility issues, the Commission reiterates the judgment it has made that

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<sup>1</sup> 47 CFR Section 73.658(g)

<sup>2</sup> Order/FNPRM at 19.

implementation of ATV within the existing framework of the broadcast industry is most likely to achieve the objective of expediting the introduction of ATV services to the American public.<sup>3</sup> While the networks are not separately licensed by the Commission, they are nevertheless an integral part of the existing broadcast system<sup>4</sup> and are likely to be an early source of ATV programming.<sup>5</sup> Accordingly, we agree with the Commission's conclusion that permitting the networks to provide their affiliates with a second feed for ATV programming<sup>6</sup> is likely to contribute to expeditious delivery of ATV programming to the public.

2. Temporary Suspension Of The Dual Network Rule Can Be Decided Without Addressing The Rule's Original Rationale.

The rationale for the rule when it was adopted over 50 years ago (originally for radio) was to promote program

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<sup>3</sup> Order/FNPRM at 4-6.

<sup>4</sup> In recent remarks before the Federal Communications Bar Association, Commissioner Duggan opined that there is no substitute for the networks or for the "potent combination of local coverage and national programming that networks and affiliates provide" and that it is clearly in the public interest for the networks to survive and succeed. (The Networks and the Nation, Remarks of Commissioner Ervin S. Duggan before the New York Chapter of the Federal Communications Bar Association, May 27, 1992).

<sup>5</sup> Order/FNPRM at 19.

<sup>6</sup> ATV programming should be defined to include upconverted NSTC programming. Since the Commission has not established any minimum requirement on the amount of programming originally produced in the ATV mode that must be broadcast on ATV channels, it would be inappropriate to impose any such condition on the suspension of the dual network rule.

diversity and the growth of additional national networks.<sup>7</sup> Whatever one thinks of the continued vitality of this rationale in the modern video marketplace, the policy determinations already reached by the Commission in this proceeding make it unnecessary for the Commission to address the rule's original rationale in evaluating whether or not to suspend it. In deciding to limit initial eligibility for ATV frequencies to existing broadcasters, the Commission determined that its objective is "not to launch a new and separate video service" but instead "to encourage beneficial technical change in the existing terrestrial broadcast service by allowing broadcasters to assimilate ATV technology".<sup>8</sup> Suspension of the rule would carry out the Commission's objective "to preserve and improve the existing broadcast service and the benefits that this service delivers to the public".<sup>9</sup> Failure to suspend the rule would jeopardize the existence of the traditional networks by foreclosing the opportunity to develop ATV networks to replace their existing

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<sup>7</sup> Adopted for radio in Report on Chain Broadcasting and Order in Docket No. 5060 (May 2, 1941), aff'd sub nom. National Broadcasting Company v. United States, 319 U.S. 190 (1943); applied to television in Amendment of Part 3 of the Commission's Rules, 11 Fed Reg 33 (1946).

<sup>8</sup> Tentative Decision and Further Notice of Inquiry, 3 FCC Rcd 6520 (1988) at 136.

<sup>9</sup> Id.

NTSC networks at the end of the transition period.<sup>10</sup>

3. The Suspension Of The Dual Network Rule Should Extend To Circumstances Where A Network's Two Feeds Go To Different Licensees In A Market.

In our earlier comments in this proceeding, Capital Cities/ABC requested that the dual network rule be suspended not only to allow the network to feed its existing affiliate with a second ATV feed, but also to allow a network to affiliate with a separately owned ATV licensee in the case where the network's existing NTSC affiliate in a market fails to be awarded an ATV facility. In the Order/FNPRM, the Commission requests comment on whether networks should be permitted to be affiliated with different NTSC and ATV licensees in a market, and if so, whether additional regulatory steps should be required in such case.<sup>11</sup>

Preliminarily, we note that the Commission has under consideration in a separate proceeding whether or not to repeal the dual network rule entirely in order to facilitate broadcasters' ability to compete on a more equal footing with

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<sup>10</sup> We take note of the comments filed today in this proceeding by the Network Affiliated Stations' Alliance ("NASA") urging the Commission to reconsider the application/construction deadlines established by the Order/NPRM. The Commission should carefully consider NASA's views that the deadlines would pose undue financial risks to stations. To the extent that affiliated stations are handicapped in successfully making the transition to ATV, the network-affiliate distribution system would also be harmed.

<sup>11</sup> Order/FNPRM at 19.

multichannel service providers.<sup>12</sup> We have in the past urged the Commission to take such action and we plan to file comments in said proceeding. However, we do not believe it is necessary for the Commission to reach a general conclusion about the fate of the dual network rule in order to decide on a temporary suspension of the rule in the limited context of ATV transition.

In our judgment, permitting networks to serve separately-owned NTSC and ATV licensees is necessary in order properly to implement the Commission's overall ATV objectives and to avoid unjustified competitive harm to networks that would otherwise ensue. If a network whose NTSC affiliate failed to be awarded (or forfeited) an ATV conversion channel was thereby foreclosed from any ATV affiliation in that market, the result would be to competitively disadvantage the affected network based on circumstances beyond its control. Moreover, the Commission's objective of encouraging ATV set penetration to expedite ATV implementation would be hampered in any such market by the unavailability of a likely major source of ATV programming.

Assuming the Commission decides that it is in the public interest to permit networks to have separately-owned NTSC and ATV affiliates in the same market during the ATV transition

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<sup>12</sup> Notice of Proposed Rulemaking in the Matter of Review of the Commission's Regulations Governing Television Broadcasting. FCC 92-209, Released June 12, 1992, at 29-34.

period, we see no reason why any additional regulatory steps should be required. The network with both an NTSC affiliate and an ATV affiliate would have no incentive to favor one station over the other. The network's objective is to maximize circulation for the purpose of national advertising sales. Whether the network sells time on its NTSC and ATV networks jointly, or separately, it would have no economic incentive to favor one aspect of its business over another.

While it is true that separately-owned NTSC and ATV network affiliates in a market would not be subject to the simulcast rules that the Commission adopts, that fact does not establish a need for additional regulation. First, it is likely that the vast majority of NTSC licensees will both apply for and be awarded ATV channels since the alternative is to go out of business at the end of the transition. Second, so far as network programming is concerned, the separately-owned NTSC and ATV affiliates in a market will be in a position to broadcast the same programming even without a simulcast rule. The networks will be basing their national programming plans on the simulcast requirements the Commission adopts which will be applicable in the vast majority of markets. Therefore, the two network services that would be available in markets with separately-owned NTSC and ATV affiliates would be the same network services available in markets governed by the simulcast rules. Thus, the Commission's simulcast objectives would likely be satisfied

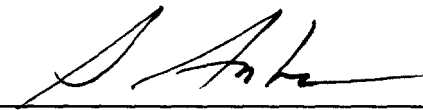


even without a special simulcast rule specifically tailored to these circumstances. Moreover, crafting such a special rule would be extremely cumbersome and would involve the Commission in the dubious exercise of mandating some form of coordination of program decisions between two separately-owned stations.

4. Conclusion

For the reasons stated, we would urge the Commission to suspend the dual network rule for the duration of the ATV transition period to enable network companies to simultaneously operate both an NTSC and an ATV network.

Respectfully submitted,

By   
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